

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

JOSEPH A. DIRUZZO,
Plaintiff,

v.

TEXAS MEDICAL BOARD,
GREG ABBOTT, TEXAS ATTORNEY
GENERAL,
Defendants.

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Case No. A:12-CV-0430-SS

**DEFENDANT GREG ABBOTT'S AND OFFICE OF THE ATTORNEY
GENERAL'S ANSWER TO PLAINTIFF'S ORIGINAL COMPLAINT**

TO THE HONORABLE JUDGE SAM SPARKS:

Defendant Greg Abbott, individually, and in his official capacity as Texas Attorney General (collectively the OAG Defendants) files this Defendants' Answer to Plaintiff's Original Complaint and would show this Court as follows:

ANSWER

Pursuant to FED. R. CIV. P. 8(b), the OAG Defendants deny each and every allegation contained in Plaintiff's Original Complaint except for those expressly admitted below. Defendants may not have personal knowledge of the facts expressed in Plaintiff's Complaint and may have relied on individuals with knowledge of relevant facts in forming their answers. In several instances, the OAG Defendants have identified statements in the Complaint that are legal conclusions or non-factual statements rather than factual assertions. No response to such legal conclusions or non-factual statements is required. However, if such response is required, Defendants deny such legal

conclusions and non-factual statements. These numbered paragraphs and titles correspond to the paragraphs and titles within the body of Plaintiff's Complaint.

NO JURISDICTION

1. The OAG Defendants deny jurisdiction based on the grounds to be asserted in their Rule 12 Motion to Dismiss.

VENUE

2. The OAG Defendants admit this Court would have venue to decide these claims, but deny that any claims asserted are valid against them.

PARTIES

1. The OAG Defendants lack sufficient information to admit or deny Plaintiff's residence.

2. Admit.

3. Admit.

FIRST CAUSE OF ACTION

4. The OAG Defendants lack sufficient information to admit or deny this Paragraph. However, this Paragraph is contained as ¶ 13 of a pending Complaint in another lawsuit which was dismissed,¹ and is currently on appeal to the Fifth Circuit, that being Case No. A-11-CA-679-SS. Consequently, it is barred by res judicata and collateral estoppel.

SECOND CAUSE OF ACTION

5. The OAG Defendants lack sufficient information to admit or deny this Paragraph. However, this Paragraph is contained as ¶ 14 of a pending Complaint in another lawsuit which was dismissed, and is currently on appeal to the Fifth Circuit, that being Case No. A-11-CA-679-SS. Consequently, it is barred by res judicata and collateral

¹ See Dkt#21, Order in *Di Ruzzo v. Tabaracci, et al*, Case No. A-11-CA-679-SS.

estoppel.

THIRD CAUSE OF ACTION

6. The OAG Defendants lack sufficient information to admit or deny this Paragraph. However, this Paragraph is contained as ¶ 15 of a pending Complaint in another lawsuit which was dismissed, and is currently on appeal to the Fifth Circuit, that being Case No. A-11-CA-679-SS. Consequently, it is barred by res judicata and collateral estoppel.

FOURTH CAUSE OF ACTION

7. The OAG Defendants lack sufficient information to admit or deny this Paragraph. However, this Paragraph is contained as ¶ 16 of a pending Complaint in another lawsuit which was dismissed, and is currently on appeal to the Fifth Circuit, that being Case No. A-11-CA-679-SS. Consequently, it is barred by res judicata and collateral estoppel.

FIFTH CAUSE OF ACTION

8. The OAG Defendants lack sufficient information to admit or deny this Paragraph. However, this Paragraph is contained as ¶ 17 of a pending Complaint in another lawsuit which was dismissed, and is currently on appeal to the Fifth Circuit, that being Case No. A-11-CA-679-SS. Consequently, it is barred by res judicata and collateral estoppel.

SIXTH CAUSE OF ACTION

9. The OAG Defendants lack sufficient information to admit or deny this Paragraph. However, this Paragraph is contained as ¶ 13 of a pending Complaint in another lawsuit which was dismissed, and is currently on appeal to the Fifth Circuit, that being Case No. A-11-CA-679-SS. Consequently, it is barred by res judicata and collateral estoppel.

SEVENTH CAUSE OF ACTION

10. Deny.

11. Deny.

12. Deny.

EIGHTH CAUSE OF ACTION

13. Deny.

14. Deny.

15. Admit.

16. Deny.

17. Deny.

18. Deny.

19. Deny.

20. Deny.

21. Deny.

22. Admit as to the OAG Defendants.

23. Deny.

24. Deny.

DEFENDANT'S AFFIRMATIVE DEFENSES

Pleading further, Defendants assert that they are entitled to the following affirmative defenses:

1. Defendant OAG and the individual Defendant Gregg Abbott in his official capacity assert they are entitled to Eleventh Amendment immunity from all federal claims asserted in this lawsuit.

2. Defendant Gregg Abbott in his individual capacity is entitled to both absolute immunity for any adjudicative or prosecutorial functions performed by him, and to

qualified immunity for any investigative functions performed by him which are the subject of this lawsuit.

3. Pursuant to Dkt#21, the final Order in *Di Ruzzo v. Tabaracci, et al*, all claims in this lawsuit are barred by res judicata, collateral estoppel, and/or lack of standing. Moreover, the matters addressed herein are not ripe as no final decision has been made by the Fifth Circuit Court of Appeals in the original proceeding raising these same allegations, see Case No. A-11-CA-679-SS.

4. This Court lacks jurisdiction because the matters addressed herein are subject to Younger abstention while the appeals process is pending before the Fifth Circuit Court of Appeals.

4. Defendant Gregg Abbott in his individual capacity is entitled to qualified immunity for all actions taken by them which were objectively reasonable.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

DAVID C. MATTAX
Deputy Attorney General of Defense
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ROBERT B. O'KEEFE
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/s/ William T. Deane
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served via certified mail, return receipt requested on the following party on this the 8th day of June, 2012, as shown below:

Dr. Joseph A. Di Ruzzo, *Pro Se*
705 South Floyd Road
Richardson, Texas 75080

/s/ William T. Deane
WILLIAM T. DEANE
Assistant Attorney General